

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5308-01
Bill No.: HB 1553
Subject: Crimes and Punishment; Criminal Procedure; Judges; Law Enforcement Officers and Agencies
Type: Original
Date: March 27, 2012

Bill Summary: This proposal authorizes the expungement of certain criminal records.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	(Could exceed \$718,146)	(Could exceed \$851,559)	(Could exceed \$860,754)
Total Estimated Net Effect on General Revenue Fund	(Could exceed \$718,146)	(Could exceed \$851,559)	(Could exceed \$860,754)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Criminal Records	(\$230,273)	(\$279,150)	(\$282,001)
Total Estimated Net Effect on <u>Other</u> State Funds	(\$230,273)	(\$279,150)	(\$282,001)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	20	20	20
Criminal Records	6	6	6
Total Estimated Net Effect on FTE	26	26	26

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Joint Committee on Administrative Rules** and the **Office of the State Public Defender** each assume the proposal would not fiscally impact their respective agencies.

Officials from the **Department of Corrections (DOC)** state their computer system for monitoring inmate records does have the ability to mark records as confidential and to delete them; hard-copy records are the concern. If expungement of convictions includes prison records, this would create a significant workload on DOC's record offices within the institutions and at the probation and parole offices. There is also a concern for tracking previous medical, mental health, substance abuse and education records. Fiscal impact due to passage of this proposal is an unknown amount of costs per each year.

Officials from the **Office of the State Courts Administrator (CTS)** state the proposed legislation would expand the number of criminal records eligible for expungement. This would cause a significant workload and fiscal impact on the courts. As a result of this legislation, we estimate annually approximately:

13,269 misdemeanor and nonviolent felony expungement petitions (10% of the annual 132,698 guilty dispositions)

Based upon our clerical weighted workload statistics, it would take 166 minutes or 2.7 hours to process each case. In FY 2013, we estimate the cost will be \$825,868 and 23 court clerk FTE.

However, in response to similar proposals in previous years, including HB 178 in 2011, CTS estimated approximately 9,000 expungement petitions to be processed from this proposal and an estimated time of 3.75 hours of processing time for each. Based upon these estimations, CTS assumed the need for 20 additional court clerk FTE at a cost of \$735,000 per year. **Oversight** will utilize this lower estimate

In response to a similar proposal from this year (HB 1344), officials from the **Department of Transportation (MoDOT)** stated it appears that this bill would take MoDOT out of compliance with federal regulations regarding CDL holder's records. 49 CFR Section 384.226 prohibits states from masking any CDL drivers' convictions for any state or local traffic control laws from appearing on the driver's record in any type of motor vehicle. 49 CFR Section 384.225 requires a minimum retention period of three years but also cites retention requirements found in the

ASSUMPTION (continued)

Commercial Driver's License Information System which discusses a ten year driver's license history.

The bill would allow any person to apply to any court to have his or her record expunged of:

1. All nonviolent felony crimes;
2. Any misdemeanor offense;
3. Any municipal offense; and
4. Any traffic offense. This would include traffic violations by CDL holders

By allowing CDL holders to have records of their traffic violations expunged, the proposal masks violations on CDL holders' driving records, thereby violating 49 CFR Section 384.226 and/or Section 384.225 record retention. MoDOT believes this language will place Missouri out of compliance with the federal regulations; therefore, Missouri could lose federal funding.

Possible impact to Federal-Aid Highway Funds: If this legislation is enacted, the United States Department of Transportation (USDOT) would sanction Missouri's Federal-aid highway funds, which would significantly and negatively affect MoDOT. MoDOT would lose 5% (\$30 million) the first year, then 10% (\$60 million) each year thereafter.

Impact to Motor Carrier Safety Assistance Program: Highway Safety is the recipient of a grant to administer the federal Motor Crime Safety Assistance Program (MCSAP). These grant funds are utilized statewide to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles. In addition to having its Federal-aid highway funds withheld, Missouri could also lose its MCSAP grant monies if it were found out of compliance with 49 CFR Section 384.226. According to Highway Safety, the MCSAP grant totals approximately \$5 million per year.

Officials from the **Department of Revenue (DOR)** state Section 610.142 would require the Department, if named as a party defendant, to honor a court order for expungement of any non-violent felony, misdemeanor or infraction traffic offense, or non-violent drug offense, for persons eligible under these provisions. Would include any offenses with a plea of guilty or finding of guilty by a court (SIS). Under these provisions, a person may apply to the circuit court where he or she pleaded guilty to or was found guilty of most any felony, misdemeanor or infraction traffic offense (all non-violent crimes; misdemeanors; non-violent drug offenses) to expunge all record, criminal or civil, or any arrest, plea or conviction, after four years from the date of completion of a period of imprisonment, probation or parole, and upon a showing that he or she has "not been convicted" of a felony or misdemeanor or been placed on probation during

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ASSUMPTION (continued)

the 4-year period (excluding any moving traffic violations).

Administrative Impact - the Department is unable to determine how many court-order expungements will be received to process. A Revenue Processing Tech I can process 104 court orders per day. If we receive 104 court orders daily we would require one FTE to process the additional court order expungements. If the volume of court-order expungements received for processing exceeds 104 per day, then additional FTE will be required and will be requested through the appropriation process.

Revenue Impact - if a court-ordered expungement is received for a conviction involving the operation of a commercial vehicle or by a commercial driver license holder, the state of Missouri could be found to be in noncompliance based on the following federal regulations: Title 49 part 384 section 384.225, Title 49 part 384 section 384.226, Title 49 part 383 section 383.51 and Title 49 part 384, section 384.231.

If a court-ordered expungement is received for an offense involving the use of a commercial or noncommercial motor vehicle by a CDL holder or a person required to have a CDL and a state is found to be in noncompliance, than Federal Highway funds are subject to a reduction or could be withheld. The first year of noncompliance the sanction is up to five (5) percent, the second and subsequent years of noncompliance the sanction is up to ten (10) percent of those funds. Potential fund loss could be \$65,000,000.

Oversight assumes the Department of Revenue's and the Department of Transportation's assumption that the proposal would jeopardize federal funding is speculative and dependent upon other factors. Therefore, Oversight is not reflecting a fiscal impact to MoDOT in this fiscal note. If the state is found to be out of compliance with federal requirements, then the proposal could result in a loss of federal funding.

Oversight assumes the level of expungement will not rise to a level that would require the Department of Revenue to require an additional FTE.

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** state their Criminal Justice Information Services Division assumes that if every person who is qualified to have his or her record expunged would submit a petition, there would be approximately 15,000 petitions for expungement and this would require 12 additional FTE.

1 FTE = 1,856 hours (average work hours per year) x 60 minutes per hour = 111,360 minutes per year.

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ASSUMPTION (continued)

Estimated 15,000 petitions for expungement per year x 90 minutes per petition to process = 1,350,000 minutes per year. 1,350,000 minutes per year to process expungements divided by 111,360 minutes per year per FTE = 12 FTE.

It is estimated only 40% to 50% of expungement requests would be submitted. Therefore, this proposed legislation would require five to seven FTE. For purposes of this fiscal note, the Patrol will request six which is in the middle of that range. These FTE (Criminal History Technicians) would be necessary to process all expungement requests, review criminal history records, contact any agency associated with the arrests or convictions, and collect the necessary data for the court orders. These FTE will most likely be 2nd and 3rd shift employees so they would not require any equipment. However, there would be recurring costs of \$650 per year per FTE for office supplies and phone charges. If any FTE were placed on the 1st shift, standard equipment would be required at a one-time cost of \$3,566 per FTE.

6 Criminal History Technicians (\$1,081 x 24)	\$155,664
Office Equipment/HW/SW	\$3,566

RECURRING COSTS

Phone Charges per FTE	\$350
Office Supplies per FTE	\$300

The Highway Patrol assumes a total cost of the additional FTE of approximately \$280,000 per year to the Criminal Records Fund.

If this bill passes, the Highway Patrol will pursue a fee, similar to the criminal history background check fee, to help offset the costs of researching and reviewing the criminal histories, as well as contacting the various agencies associated with the arrests. For example, a \$20 fee x 7,500 applicants would result in \$150,000 (\$20 x 7,500).

Oversight assumes the proposal does not specifically allow for a fee to reimburse the Highway Patrol; therefore, Oversight will reflect only the costs assumed by the agency.

Officials from the **Office of the Attorney General (AGO)** assume that costs are unknown and would depend upon the number of cases in which the AGO was named as an agency in possession of records.

Officials from the **Office of Prosecution Services** assume the proposal will have no measurable fiscal impact on their office. The creation of a new crime creates additional responsibilities for

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ASSUMPTION (continued)

county prosecutors which may in turn result in additional costs which are difficult to determine. impact.

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
GENERAL REVENUE			
<u>Costs - Department of Corrections</u>			
Potential costs to expunge records	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs - Attorney General's Office</u>			
Potential costs of expungement of records	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs - Office of State Courts Administrator (CTS)</u>			
Personal Service	(\$459,400)	(\$556,793)	(\$562,361)
Fringe Benefits	(\$243,206)	(\$294,766)	(\$297,714)
Expense and Equipment	(\$15,540)	\$0	\$0
<u>Total Costs - CTS</u>	<u>(\$718,146)</u>	<u>(\$851,559)</u>	<u>(\$860,075)</u>
FTE Change - CTS	20 FTE	20 FTE	20 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Could exceed \$718,146)</u>	<u>(Could exceed \$851,559)</u>	<u>(Could exceed \$860,754)</u>
Estimated Net FTE Change for the General Revenue Fund	20 FTE	20 FTE	20 FTE
CRIMINAL RECORDS FUND			
<u>Costs - Missouri Highway Patrol (MHP)</u>			
Personal Service	(\$129,720)	(\$157,221)	(\$158,793)
Fringe Benefits	(\$97,303)	(\$117,931)	(\$119,111)
Expense and Equipment	(\$3,250)	(\$3,998)	(\$4,097)
<u>Total Costs - MHP</u>	<u>(\$230,273)</u>	<u>(\$279,150)</u>	<u>(\$282,001)</u>
FTE Change - MHP	6 FTE	6 FTE	6 FTE
ESTIMATED NET EFFECT TO THE CRIMINAL RECORDS FUND	<u>(\$230,273)</u>	<u>(\$279,150)</u>	<u>(\$282,001)</u>
Estimated Net FTE Change for the Criminal Records Fund	6 FTE	6 FTE	6 FTE

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FISCAL IMPACT - Local Government

FY 2013
(10 Mo.)

FY 2014

FY 2015

\$0

\$0

\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This proposal authorizes the expungement of certain criminal records including convictions for any nonviolent crime, misdemeanor offense, or nonviolent drug violation. The expungement of a record is allowed when at least four years have elapsed since the person requesting expungement has completed his or her imprisonment, period of probation, or period of parole and the person has graduated from high school or received a general educational development (GED) degree, graduated from an institution of higher education with at least an associate's degree or maintained employment with the same employer for at least two consecutive years, completed 700 hours of community service, and has not been convicted of or been placed on probation for any misdemeanor or felony during the same period.

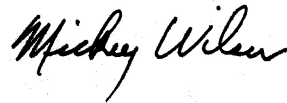
Any individual wanting to expunge a criminal record is required to file a petition in the civil division of the circuit court in a county where any of the arrests, pleas, trials, or convictions occurred. The petition must name as defendants all entities whom the petitioner has reason to believe may possess the record. The court is required to schedule a hearing on the expungement petition no sooner than 30 days from the filing of the petition and must give reasonable notice of the hearing to each official agency or other entity named in the petition. If a court grants the order of expungement, a copy of the order must be provided to each agency identified in the petition. The court records and files maintained in any administrative or court proceeding for any offense ordered expunged will be confidential and only available to the parties or by order of the court for good cause. An individual will be granted only one petition for expungement but one or more offenses may be expunged as long as all of the offenses are listed on the petition.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

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SOURCES OF INFORMATION

Office of the State Courts Administrator
Department of Corrections
Department of Public Safety
Department of Transportation
Office of the State Public Defender
Office of the Secretary of State
Joint Committee on Legislative Rules
Department of Revenue
Attorney General's Office
Office of Prosecution Services

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
March 27, 2012